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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/708,864	03/29/2004	Jody H. Pattie	03-0208 (BOE 0471 PA)	2863
27256	7590	10/28/2005	EXAMINER	
ARTZ & ARTZ, P.C. 28333 TELEGRAPH RD. SUITE 250 SOUTHFIELD, MI 48034			RADI, JOHN A	
			ART UNIT	PAPER NUMBER
			3641	

DATE MAILED: 10/28/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary**Application No.**

10/708,864

Applicant(s)

PATTIE ET AL.

Examiner

John A. Radi

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 06 September 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(1-22) is/are pending in the application.
- 4a) Of the above claim(s) 10-22 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-9 and 23-35 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date <u>3/29/04</u> | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Election/Restrictions

Claim 1 is generic to a plurality of disclosed patentably distinct species comprising:

- A) a slideable bracket with a fixed perimeter (figures 5-8) or
- B) a slideable bracket with a resilient support member (figures 9a-c)

Applicant is required under 35 U.S.C. 121 to elect a single disclosed species, even though this requirement is traversed.

Should applicant traverse on the ground that the species are not patentably distinct, applicant should submit evidence or identify such evidence now of record showing the species to be obvious variants or clearly admit on the record that this is the case. In either instance, if the examiner finds one of the inventions unpatentable over the prior art, the evidence or admission may be used in a rejection under 35 U.S.C. 103(a) of the other invention.

During a telephone conversation with Vincent Ilagen on October 20, 2005 a provisional election was made to prosecute the invention of a slideable bracket with a fixed perimeter (**species A**). Affirmation of this election must be made by applicant in replying to this Office action. **Claims 10-22 are withdrawn** from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim

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remaining in the application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

Claims 1-9 and 23-35 are rejected under 35 U.S.C. 103(a) as being unpatentable over Todd et al. (US 5165628) in view of Sherman (US 4516296).

Todd discloses: at least one rail having a groove (26); at least one pair of support brackets (84, 86) coupled to said rail and positioned along said groove for supporting a proximal surface of the duct; and at least one flexible band (100) coupled to said at least one pair of support brackets with the duct thereby between, for distributing a clamping load substantially across a distal surface of the duct. Furthermore, Todd discloses a rail assembly in which there are a series of openings formed therein for passing a series of fasteners (28), wherein bracket has a notch for passing a flexible band (col. 8, lines 61-63, and fig. 5 and 6) for securing the duct, and where the bracket support has a substantially constant predetermined radius of curvature, and where the brackets have a flange for slidably engaging with said rail.

Todd doesn't disclose: a bracket wherein said pair of support brackets has a support portion distributing said clamping load substantially across said proximal surface. Sherman discloses a tube clamping device in which the proximal and distal surfaces of the brackets are formed to conform to the radius of the pipe or conduit (fig. 3, 29). Sherman provides for a conforming member around the conduit or pipe so that the clamping assembly won't deform or damage the tubing through over tightening. It would have been obvious to one skilled in the art at the time of invention to form the brackets taught by Todd to conform to the conduit which is being supported as taught by Sherman and therefore the invention as claimed by the applicant is prima facie obvious.

With respect to claims 5 and 6, regarding manufacturing process of brackets and rails, the method of forming the device is not germane to the issue of patentability of the device itself. Therefore, these limitations have not been given patentable weight.

With regard to claim 23-35, Todd doesn't disclose an airframe or a plurality of ducts. However, in the first paragraph of the applicant's discussion of the background of the invention, the applicant discloses that "aircraft manufacturers are well known for producing aircrafts having HVAC systems... typically comprised of a series of cylindrical tubing or ducts... [typically requiring] a plurality of support assemblies for mounting each support assembly to the airframe of the aircraft." Therefore, it would have been obvious to one skilled in the art at the time of invention to combine the slidable duct support assembly as taught by Todd in view of Sherman, to support said ductwork.

With respect to claims 27, and 28, regarding manufacturing process of brackets and rails: the method of forming the device is not germane to the issue of patentability of the device itself. Therefore, these limitations have not been given patentable weight.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure, see attached form PTO-892 for a complete listing of prior art. In particular, Botting, Garnet, Lange, and Back with regard to brackets curved to support the proximal surface of ducts and pipes.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to John A. Radi whose telephone number is 571-272-5883. The examiner can normally be reached on M-F 8-5.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael J. Carone can be reached on 571-272-6873. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

John A. Radi
Patent Examiner
Art Unit 3641



MICHAEL J. CARONE
SUPERVISORY PATENT EXAMINER